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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,523	06/14/2001	Christopher Allin Kitz	2121P	8134
7590	09/23/2005			
SAWYER LAW GROUP LLP P.O. Box 51418 Palo Alto, CA 94303			EXAMINER DASS, HARISH T	
			ART UNIT 3628	PAPER NUMBER

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/881,523

Applicant(s)

KITZE, CHRISTOPHER ALLIN

Examiner

Harish T. Dass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al (hereinafter Johnson – US 6,167,124).

Re. Claim 1, Johnson discloses (a) when a digital file (files – voice, video, etc) is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to transport the file over the network for a particular price [see entire document particularly, Abstract; C2 L45 to C3 L26; C3 L46-L65; C20 L30-L44];

and

(b) allowing the node with a lowest bid to transport to file to the receiving node, thereby optimizing network traffic based on economics [C1 L25 to C2 L44; C18 L30 to C19 L4 – see manager keeps track of each carrier's charge ... "least cost routing"].

Re. Claim 2, Johnson discloses paying a user of the transporting node the particular price [C20 L4-L29].

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Re. Claim 3, Johnson discloses including the step of billing a user of the sending node [C22 L25-65].

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Odlyzko (US 6295,294).

Re. Claims 4-9, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [C16 L1-L13; C19 L45 to C20 L43]:

Johnson does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, then sending the file peer-to-peer (two points), if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if the

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specified quality of service is scheduled delivery, then queuing file transmission until a scheduled time.

However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow the user to select a service (channel) from plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson and Odlyzko to allowing a user to specify different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claim 10, peer-to-peer network claim 10 is substantially similar to claim 1 and therefore rejected with same rational as claim 1.

Re. Claim 11, peer-to-peer network claim 11 is substantially similar to claim 2 and therefore rejected with same rational as claim 2.

Re. Claim 12, peer-to-peer network claim 12 is substantially similar to claim 3 and therefore rejected with same rational as claim 3.

Re. Claims 13-18, peer-to-peer network claims 13-18 are substantially similar to claim 4-9 and therefore, they are rejected with same rational as claims 4-9.

Re. Claim 19, Johnson discloses (a) providing a peer-to-peer network that includes at least one server node and multiple client nodes (Co Switches) [Figure 2-6, 9, 11; C1 L25-L39; C3 L13-L65];

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(b) when a digital file is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to transport the file over the network for a particular price [C2 L45 to C3 L26; C3 L46-L65; C20 L30-L44];

(c) allowing the node with a lowest bid to transport to file to the receiving node [C1 L25 to C2 L44; C18 L30 to C19 L4];

and

(d) billing a user account of the sending node, and paying a user of the transporting node the particular price [C20 L30-L43; C22 L25-65], thereby optimizing network traffic based on economics (efficient, switch network, least costly) [C2 L25-L38; C15 L48-L56; C22 L25-65 – see manager keeps track of each carrier's charge ... "least cost routing"]].

Re. Claims 20-25, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [C16 L1-L13; C19 L45 to C20 L43]. Johnson does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, including step of setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, then sending the file peer-to-peer, if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if the specified quality of service is scheduled delivery, then queuing file transmission until a

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scheduled time. However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow the user to select a service (channel) from plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson and Odlyzko to allowing a user to specify different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claim 26, peer-to-peer network claim 26 is substantially similar to claim 19 and therefore rejected with same rational as claim 19.

Re. Claims 27-32, peer-to-peer network claims 27-32 are substantially similar to claim 20-25 and therefore, they are rejected with same rational as claims 20-25.

Claims 33-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Odlyzko and Barzilai et al (hereinafter Barzilai – US 6,012,045).

Re. Claim 33, Johnson discloses (c) in response to the user publishing one or more files, prompting the user to select a quality of service for file delivery [C3 L47-L55 – see distribute]; (g) comparing the received bids and choosing the node that submitted a lowest price to transport the file [C18 L30-L67; C20 L4-L29]; and (f) accepting bids to transport the file from other nodes [Abstract]. Johnson does not explicitly disclose

(a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer [Abstract; C2

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L20-L66]; (b) receiving registration information entered by the user, and generating a user account [C4 L11-L40; C5 L7 to C3 L37];

(d) calculating a total fee to charge the user for delivery of the file and automatically billing the user's account [Barzilai – C1 L30-L45; C6 L27-L37];

(e) offering delivery of the file up for bidding from a central location; and

(h) paying a user of the transporting node, thereby allowing the user of the transporting node to generate extra revenue and optimizing network traffic based on economics.

However, Odlyzko discloses (e) offering delivery of the file up for bidding from a central location [Odlyzko - C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow user to submit bids for delivery of the file (data) based on the quality of service.

Barzilai disclosed (a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer [Abstract; C2 L20-L66]; (b) receiving registration information entered by the user, and generating a user account [C4 L11-L40; C5 L7 to C3 L37], and

(d) calculating a total fee to charge the user for delivery of the file and automatically billing the user's account [Barzilai – C1 L30-L45; C6 L27-L37] to establish a virtual showroom where customers have to be member to participate in bidding.

Further, (h) paying a user of the transporting node, thereby allowing the user of the transporting node to generate extra revenue and optimizing network traffic based on economics is well known (payment to auctioneer to compensate for services is known and inherent part of Barzilai disclosure.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, Odlyzko and Barzilia to allowing a paying members to submit bids for different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files

Re. Claims 34-35, Barzilai further discloses generating a digital certificate for the user that includes a public key and a private key (see encryption), storing the user's account information and the user's public key and private key in at least one database accessible by a server node [C6 L50-L57; C7 L60 to C8 L33 – see encryption].

Re. Claim 36, Johnson discloses publishing the file by making the file publicly available on the network for searching by other client nodes by adding the file to a searchable index of shared files on the server node [C18 L30-L67; C20 L4-L29].

Re. Claims 37-38, Johnson does not explicitly disclose publishing the file for direct file transfer and showing the user a fee charged for each level of quality of service. However, file transfer protocol is well known to transfer files from one computer to another directly either in binary format of files format and similarly showing the user a fee charged for each level of quality of service is well known to allow the user to check his bill statement and charge rate (For example, customer checks his/her phone bill for different charges, Internet, cable, long distance, local, operator assistance, etc).

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Re. Claim 39, Barzilai further discloses digitally signing the file and storing the digital signature on the server node for file authentication [C7 L60 to C8 L33].

Re. Claim 40, neither Johnson nor Odlyzko or Barzilia disclose uploading a copy of the file to the server node so that when the recipient node is off-line at the time the file is to be delivered, the server node can deliver the file when recipient node comes back on-line. However, this is well known to one skill in the art to keep a copy of the file in server for later delivery (for example, an email is delivered when the recipient logs in to the email server and reads his/her email).

Re. Claim 41-44, Barizilia further discloses member account activity and webpage [Figures 2, 7; C5 L7-L40]. Neither Johnson nor Odlyzko or Barzilia disclose providing the offer as an entry on a web page that includes a name and size of the file, a chosen quality of service, a location of the recipient, and a bid submission time limit, identifying in the bid the bidding node, and a predetermined price and a quality of service for delivering the file, choosing the bid that has the lowest price and that matches the quality of service in the offer, and providing the node that submitted the chosen bid with information necessary to transport the file across the network. However, these features are well known to electronic auction site where the site provides all the information on auction web page (For example, eBay, shows the bids, price, item auctioned, and customer account, etc.)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

US 6199054 to Khan et al, Mar. 6, 2001 "Automated Software Metering of Digital Payloads" discloses a system monitors a data payload that is being transmitted in a secure form over the Internet and provides rate computations for such payloads based on the size of the data. A data container may be implemented as a digital envelope with the bitmap (digital picture) of a stamp. The current rate for the data container is shown on the stamp and is dynamically updated as data files are added to the envelope. The overall cost is a function of the applied rate card, the size of the data and the type of security services provided.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harish T Dass
Examiner
Art Unit 3628

9/19/05


HYUNG SOUGH
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